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EXAMINER

JAGAN, MIRELLYS

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 08/23/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/505,119

Applicant(s)

REVNELL, JOSEPH D.

Examiner

Mirellys Jagan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-18 and 25-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-29 and 68 is/are allowed.
- 6) ☒ Claim(s) 2-18, 25 and 30-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 2/13/02 and 7/12/02 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 17, 18, and 40-53 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted step is the step of attaching the tape measure to the stationary member. As claimed, there is no structural relationship between the tape measure and the stationary member. In this case, the stationary member can be considered to be a notebook or a piece of paper on a table, wherein a person takes a tape measure and, while holding the tape measure, measures a window or a wall, and then notes the measurement on the notebook or piece of paper. The invention discloses that the tape measure is permanently attached to the stationary member. Claims 18 and 40-53 are rejected for being dependent on rejected base claim 17.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 25, 54-56, 58, 59, 61, 62, and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,344,231 to Martinez.

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Martinez discloses a layout device having:

a circular stationary member (board) with non-slip feet and a flat surface adapted to be marked on,

an angle and distance device rotatably attached to the stationary member, the angle and distance device having a tape measure having an extendable tape, a tape measure extender, and a carrier that is pivotally coupled to the stationary member for holding the tape measure, wherein the tape can be extended from a central point and an edge that can facilitate marking on the stationary member.

The device is used for measuring and laying out an area template by providing the stationary member, the angle and distance device, the tape measure, and a sheet of paper on the stationary member, and forming a layout by marking on the paper on the stationary member as the angle and distance device is rotated and the tape is extended and retracted using the tape measure extender.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 60 and 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez.

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Martinez discloses a method of utilizing a device having all of the limitations of claims 60 and 63, as stated above in paragraph 4, except for the stationary member being semi-circular.

Referring to claim 60, eliminating the paper disclosed by Martinez, absent any criticality, is only considered to be an obvious modification of the device disclosed by Martinez that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in eliminating an element and its function if the remaining elements perform the same functions as before. See *In re Karlson*, 136 USPQ 184 (CCPA 1963). In this case, when the paper on the stationary member is eliminated, all of the remaining elements will still perform the same function of providing a layout of a surface area.

Referring to claim 63, the shape of the stationary member, i.e., semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Martinez as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

7. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez in view of Mercier.

Martinez discloses a method of utilizing a device having all of the limitations of claim 66, as stated above in paragraph 4, except for the device having a digital readout for displaying the distance the tape is extended.

Mercier discloses a tape measure having a digital readout (digital display 10) for automatically displaying the distance the tape is extended. The digital readout allows an individual to quickly and accurately determine the distance that the tape measure is extended (see figure 1 and abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Martinez by adding a digital readout displaying the distance the tape is extended, as disclosed by Mercier, in order to allow an individual to quickly and accurately determine the distance that the tape measure is extended when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Martinez and Mercier to layout a surface area, the method steps of claim 66 would inherently be followed.

8. Claims 17, 40, 42-49, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez.

Martinez discloses a layout device having a circular stationary member (board) with non-slip feet, the stationary member having a carrier (22) rotatably attached thereto and a tape measure connected within an end of the carrier, the tape measure having a tape measure extender for mechanically extending the tape measure. Martinez teaches that the device is used for measuring and laying out an area by providing the stationary member, the carrier, the tape

measure, and a sheet of paper on the stationary member, extending the tape from the tape measure using the tape measure extender to a critical feature of the area being measured and laid out, recording direction information signifying the angle of the tape measure relative to the stationary member on the paper, and recording the distance of the tape measure from the stationary member to the critical feature on the paper to thereby form an exact outline of the surface area that is being laid out (see column 3, lines 3 and 6-8, column 4, lines 22-24).

Martinez does not disclose the layout device being used to measure the layout of a room or the stationary member being semi-circular.

Referring to claim 17, Martinez teaches that his layout device can be used to layout a surface area, i.e., any surface area. He discloses only as an example that such an area can be a golf green, among other areas. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the Martinez device to layout the surface area within a room since a room has a surface area and Martinez discloses that his device can be used to layout any surface area.

Therefore, in utilizing the device disclosed by Martinez to layout a surface area of a room, the method steps of claims 17, 40, 42, 43, 44, 46, 47, 49 would inherently be followed.

Referring to claim 45, eliminating the paper disclosed by Martinez, absent any criticality, is only considered to be an obvious modification of the device disclosed by Martinez that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in eliminating an element and its function if the remaining elements perform the same functions as before. See *In re Karlson*, 136 USPQ 184 (CCPA 1963). In this case, when the paper on the

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stationary member is eliminated, all of the remaining elements will still perform the same function of providing a layout of a surface area.

Referring to claim 48, the shape of the stationary member, i.e., semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Martinez as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See In re Dailey, 149 USPQ 47 (CCPA 1976).

9. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez in view of Mercier.

Martinez discloses a method of utilizing a device having all of the limitations of claim 51, as stated above in paragraph 8, except for the device having a digital readout for displaying the distance the tape is extended.

Mercier discloses a tape measure having a digital readout (digital display 10) for automatically displaying the distance the tape is extended. The digital readout allows an individual to quickly and accurately determine the distance that the tape measure is extended (see figure 1 and abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Martinez by adding a digital readout displaying the distance the tape is extended, as disclosed by Mercier, in order to allow an

individual to quickly and accurately determine the distance that the tape measure is extended when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Martinez and Mercier to layout a surface area of a room, the method steps of claim 51 would inherently be followed.

10. Claims 2-4, 7, 9, 11, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,269,015 to Barker.

Barker discloses a layout device comprising:

a stationary member with a flat surface adapted to be marked on,

an angle and distance device, the device including a carrier (upper arm 11) rotatably attached to the stationary member by a centering pin (13) and adapted to hold a tape measure (housing 28) which incorporates a longitudinally and laterally rigid extensible tape (rule 29) that can be extended from a central point, the tape having an edge that can facilitate marking on the stationary member to form a template as the device is rotated and the tape is extended and retracted to critical features of an area,

a holder (block 31) attached to an end of the tape and configured for holding a writing utensil (scriber pin 33),

wherein a template can be formed by drawing distance and direction markings (lines 39) directly onto the stationary member (see figure 3).

Barker does not disclose the stationary member having a circular or semi-circular configuration, or the member being a board.

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Referring to claim 7, the particular type of material used to make the stationary member, i.e., a board, absent any criticality, is only considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person of ordinary skill in the art at the time the invention was made would have been able to provide using routine experimentation based on the intended use of applicant’s apparatus, i.e., suitability for the intended use of applicant’s apparatus. See *In re Leshin*, 125 USPQ 416 (CCPA 1960) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Referring to claims 11 and 12, the shape of the stationary member, i.e., circular or semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Barker as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention, i.e., to provide a layout on the surface of the member. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of U.S. Patent 4,835,870 to Rauch et al [hereinafter Rauch].

Barker discloses a device having all of the limitations of claim 5, as stated above in paragraph 10, except for the carrier having a front leg with guides for the tape.

Rauch discloses a device for measuring distances having a carrier with a front leg (front end area 11c) having guides (guides 20) for a tape (tape 19), the guides protecting the tape from being damaged as it is retracted back into a tape measure (see figure 1, column 2, lines 10-13, and column 3, lines 33-39).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a front leg with guides to the carrier, as disclosed by Rauch, in order to protect the tape as it is being retracted into the tape measure.

12. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of U.S. Patent 5,768,797 to Trevino.

Barker discloses a device having all of the limitations of claims 6 and 13, as stated above in paragraph 10, except for the carrier having an integral housing within which is located the tape measure, and the angle and distance device having a tape measure extender for mechanically extending the tape.

Trevino discloses a tape measure (reel 60) integrally mounted within a housing (housing 12) having means for automatically extending and retracting a tape (tape 16). The device allows a single person to extend and retract a tape while staying in a single location, thereby facilitating the taking of measurements by a single person (see figure 1A, 2, and 3, column 1, lines 29-46, and column 3, lines 20-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by mounting the tape measure

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within a housing having extending means, as disclosed by Trevino, in order to allow a single person to extend and retract the tape while staying in a single central location when taking measurements for a layout.

13. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Martinez.

Barker discloses a device having all of the limitations of claims 8 and 10, as stated above in paragraph 10, except for the stationary member having non-slip feet and the stationary member having paper placed on its surface for marking thereon.

Martinez discloses a device for mapping areas having a stationary member (board 12) with non-slip feet (legs 18) for securing the member on a surface when extending a measuring tape (tape 38) that is attached to the member, and a layout formed by drawing onto paper placed on the stationary member in order to remove the layout from the stationary member after the layout is drawn. The use of a paper allows an individual to utilize the stationary member for drawing many different layouts since the markings are not placed directly on the stationary member (see figure 2).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding non-slip feet and paper to the stationary member, as disclosed by Martinez, in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure and allow the stationary member to be utilized for more than a single layout.

14. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of French Patent 2614982 to Mercier.

Barker discloses a device having all of the limitations of claim 15, as stated above in paragraph 10, except for the device having a digital readout for displaying the distance the tape is extended.

Mercier discloses a tape measure having a digital readout (digital display 10) for automatically displaying the distance the tape is extended. The digital readout allows an individual to quickly and accurately determine the distance that the tape measure is extended (see figure 1 and abstract).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a digital readout displaying the distance the tape is extended, as disclosed by Mercier, in order to allow an individual to quickly and accurately determine the distance that the tape measure is extended when taking measurements for a layout.

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of U.S. Patent 6,115,931 to Arcand.

Barker discloses a layout device comprising:
a stationary member with a flat surface adapted to be marked on,
an angle and distance device rotatably attached to the stationary member by a centering pin (13) and including a longitudinally and laterally rigid extensible tape that can be extended from a central point, the tape having an edge that can facilitate reliably marking on the stationary

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member to form a template as the device is rotated and the tape is extended and retracted to critical features of an area, wherein a template can be formed by drawing distance and direction markings directly onto the stationary member.

Barker does not disclose the tape having a pivotal pointer at a distal end.

Arcand discloses a tape measure having a pivotal pointer (pin attachment 100) at a distal end of the tape for securely attaching the distal end onto a surface thus maintaining the tape in an extended position and allowing a single person to take measurements (see figure 3 and column 3, lines 55-60)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a pivotal pointer at a distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching the distal end onto a surface and thus maintain the tape in an extended position when marking the stationary member.

16. Claims 30, 32, 34, and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Trevino.

Barker discloses a layout device comprising:

a stationary member with a flat surface adapted to be marked on,

an angle and distance device, the device including a carrier rotatably attached to the stationary member by a centering pin (13) and adapted to hold a tape measure which incorporates a longitudinally and laterally rigid extensible tape that can be extended from a central point, the tape having an edge that can facilitate reliably marking on the stationary

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member to form an template as the device is rotated and the tape is extended and retracted to critical features of an area,

a holder attached to an end of the tape for holding a writing utensil,

wherein a template can be formed by drawing distance and direction markings directly onto the stationary member.

Barker does not disclose the device having a tape measure extender for mechanically extending the tape, the stationary member having a circular or semi-circular configuration, and the member being a board.

Trevino discloses a tape measure (reel 60) integrally mounted within a housing (housing 12) having means for automatically extending and retracting a tape (tape 16). The device allows a single person to extend and retract a tape while staying in a single location, thereby facilitating the taking of measurements by a single person (see figure 1A, 2, and 3, column 1, lines 29-46, and column 3, lines 20-46).

Referring to claim 30, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by mounting the tape measure within a housing having extending means, as disclosed by Trevino, in order to allow a single person to extend and retract the tape while staying in a single central location when taking measurements for a layout.

Referring to claim 32, the particular type of material used to make the stationary member, i.e., a board, absent any criticality, is only considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person of ordinary skill in the art at the time the invention was made would have been able to provide using routine experimentation

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based on the intended use of applicant's apparatus, i.e., suitability for the intended use of applicant's apparatus. See In re Leshin, 125 USPQ 416 (CCPA 1960), where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Referring to claims 36 and 37, the shape of the stationary member, i.e., circular or semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Barker and Trevino as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention, i.e., to provide a surface on which to mark a layout. See In re Dailey, 149 USPQ 47 (CCPA 1976).

17. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Trevino, as applied to claims 30, 32, 34, and 36-38 above, and further in view of Rauch.

Barker and Trevino disclose a device having all of the limitations of claim 31, as stated above in paragraph 16, except for the carrier having a front leg with guides for the tape.

Rauch discloses a device for measuring distances having a carrier with a front leg having guides for a tape, the guides protecting the tape from being damaged as it is retracted back into a tape measure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Trevino by adding a front leg

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with guides to the carrier, as disclosed by Rauch, in order to protect the tape as it is being retracted into the tape measure.

18. Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Trevino, as applied to claims 30, 32, 34, and 36-38 above, and further in view of Martinez.

Barker and Trevino disclose a device having all of the limitations of claims 33 and 35, as stated above in paragraph 16, except for the stationary member having non-slip feet and the stationary member having paper placed on its surface.

Martinez discloses a device for mapping areas having a stationary member with non-slip feet for securing the member to a surface when extending a measuring tape that is attached to the member, and a template being formed by drawing onto paper placed on the stationary member in order to remove the template from the stationary member after a layout is marked. The use of paper allows an individual to utilize the stationary member for drawing many different layouts since the markings are not placed directly on the stationary member (see figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Trevino by adding non-slip feet and paper to the stationary member, as disclosed by Martinez, in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure and allow the stationary member to be utilized for more than a single layout.

19. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Trevino, as applied to claims 30, 32, 34, and 36-38 above, and further in view of Arcand.

Barker and Trevino disclose a device having all of the limitations of claim 39, as stated above in paragraph 16, except for the tape having a pivotal pointer at a distal end.

Arcand discloses a tape measure having a pivotal pointer at a distal end of the tape for securely attaching the distal end onto a surface and allowing a single person to maintain the tape in an extended position when taking measurements.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Trevino by adding a pivotal pointer at a distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching the distal end onto a surface and thus maintain the tape in an extended position when marking the stationary member.

20. Claims 17, 25, 40, 43, 45, 47, 48, 50, 54-56, 58, 60, 62, 63, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker.

Barker discloses a layout device having a circular stationary member having a flat surface, the stationary member having an angle and distance device rotatably attached thereto, the angle and distance device comprising a carrier having a front leg adjacent to the top of the stationary member and a tape measure connected to the carrier, and a holder (block 31) attached to an end of the tape and configured for holding a writing utensil (scriber pin 33). The tape inside the tape measure is extended to a critical feature to be measured and a distance and direction line is drawn on the stationary member to create a layout of a surface area, wherein the length of the line is the measured distance to the critical feature and the direction of the line signifies the angular location of the critical feature with respect to the pivoting point of the tape measure,

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respectively. The mark is made along the straight edge of the front leg when the distance to the critical member is short.

Barker does not disclose the layout area being the layout of a room or the stationary member being a semi-circular board.

Referring to claim 17, Barker teaches that his layout device can be used to create a layout of a surface area having critical features to which the tape is extended to, i.e., any surface area. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the Baker device to create a layout of a room since a room has a surface area and critical features and Barker discloses that his device can be used to layout any surface area.

Therefore, in utilizing the device disclosed by Barker to layout a surface area of a room, the method steps of claims 17 and 25 would inherently be followed.

Referring to claims 43 and 58, the particular type of material used to make the stationary member, i.e., a board, absent any criticality, is only considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person of ordinary skill in the art at the time the invention was made would have been able to provide using routine experimentation based on the intended use of applicant’s apparatus, i.e., suitability for the intended use of applicant’s apparatus. See In re Leshin, 125 USPQ 416 (CCPA 1960) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Referring to claims 48 and 63, the shape of the stationary member, i.e., semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of

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the stationary member disclosed by Martinez as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

21. Claims 18, 52, and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of U.S. Patent 6,115,931 to Arcand.

Barker discloses a device having all of the limitations of claims 18, 52, and 67, as stated above in paragraph 20, except for the tape having a pivotal pointer at a distal end.

Arcand discloses a tape measure having a pivotal pointer (pin attachment 100) at a distal end of the tape for securely attaching and aligning the distal end onto a surface thus maintaining the tape in an extended position and allowing a single person to take measurements (see figure 3 and column 3, lines 55-60)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a pivotal pointer at a distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching and aligning the distal end onto a surface and thus maintain the tape in an extended position when marking the stationary member.

Therefore, in utilizing the device disclosed by Barker and Arcand to layout a surface area of a room, the method steps of claims 18, 52, and 67 would inherently be followed.

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22. Claims 41 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Rauch.

Barker discloses a device having all of the limitations of claims 41 and 57, as stated above in paragraph 20, except for the carrier having a front leg with guides for the tape.

Rauch discloses a device for measuring distances having a carrier with a front leg (front end area 11c) having guides (guides 20) for a tape (tape 19), the guides protecting the tape from being damaged as it is retracted back into a tape measure (see figure 1, column 2, lines 10-13, and column 3, lines 33-39).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a front leg with guides to the carrier, as disclosed by Rauch, in order to protect the tape as it is being retracted into the tape measure.

Therefore, in utilizing the device disclosed by Barker and Rauch to layout a surface area of a room, the method steps of claims 41 and 57 would inherently be followed.

23. Claims 44, 46, 53, 59, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Martinez.

Barker discloses a device having all of the limitations of claims 44, 46, 53, 59, and 61, as stated above in paragraph 20, except for the stationary member having non-slip feet, the stationary member having paper placed on its surface for marking thereon, and the writing the measured distance of the length of the line on the stationary member.

Martinez discloses a device for mapping areas having a stationary member (board 12) with non-slip feet (legs 18) for securing the member on a surface when extending a measuring tape (tape 38) that is attached to the member, and a layout formed by drawing onto paper placed on the stationary member in order to remove the layout from the stationary member after the layout is drawn. The use of a paper allows an individual to utilize the stationary member for drawing many different layouts since the markings are not placed directly on the stationary member (see figure 2). Martinez also teaches that the device is used for measuring and laying out an area by extending the tape from the tape measure using the tape measure extender to a critical feature of the area being measured and laid out, recording direction information signifying the angle of the tape measure relative to the stationary member on the paper, and recording the distance of the tape measure from the stationary member to the critical feature on the paper on the stationary member (see column 3, lines 3 and 6-8, column 4, lines 22-24).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding non-slip feet and paper to the stationary member, as disclosed by Martinez, in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure and allow the stationary member to be utilized for more than a single layout.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to write the measured distance of the length of the line on the stationary member, as disclosed by Martinez, so as not to forget the measurements taken and since Martinez discloses that such writing is beneficial in creating a layout.

Therefore, in utilizing the device disclosed by Barker and Martinez to layout a surface area of a room, the method steps of claims 44, 46, 53, 59, and 61 would inherently be followed.

24. Claims 49 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Trevino.

Barker discloses a device having all of the limitations of claims 49 and 64, as stated above in paragraph 20, except for the device having a tape measure extender for mechanically extending the tape.

Trevino discloses a tape measure (reel 60) integrally mounted within a housing (housing 12) having means for automatically extending and retracting a tape (tape 16). The device allows a single person to extend and retract a tape while staying in a single location, thereby facilitating the taking of measurements by a single person (see figure 1A, 2, and 3, column 1, lines 29-46, and column 3, lines 20-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by mounting the tape measure within a housing having extending means, as disclosed by Trevino, in order to allow a single person to extend and retract the tape while staying in a single central location when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Barker and Trevino to layout a surface area of a room, the method steps of claims 49 and 64 would inherently be followed.

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25. Claims 51 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Mercier.

Barker discloses a device having all of the limitations of claims 51 and 66, as stated above in paragraph 20, except for the device having a digital readout for displaying the distance the tape is extended.

Mercier discloses a tape measure having a digital readout (digital display 10) for automatically displaying the distance the tape is extended. The digital readout allows an individual to quickly and accurately determine the distance that the tape measure is extended (see figure 1 and abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a digital readout displaying the distance the tape is extended, as disclosed by Mercier, in order to allow an individual to quickly and accurately determine the distance that the tape measure is extended when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Barker and Mercier to layout a surface area of a room, the method steps of claims 51 and 66 would inherently be followed.

Allowable Subject Matter

26. Claims 26-29 and 68 are allowed.

27. The following is an examiner's statement of reasons for indicating allowable subject matter:

The prior art of record does not disclose or suggest the following in combination with the remaining limitations of the claims:

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A measuring and layout device having a motor controller that is connected to a tape measure for *axially rotating the tape measure* and programmed to create an electronic version of a template (claim 26).

Response to Arguments

28. Applicant's arguments with respect to claims 17 and 44 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 703-305-0930. The examiner can normally be reached on M-F 8:30-4:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F Gutierrez can be reached on 703-308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7725 for regular communications and 703-308-7725 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

mj
August 20, 2002



**CHRISTOPHER W. FULTON
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